IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32 (2) (b))
Description of case
795,803,818,829,830,831,847,857 & 4271 of 2001 (S/B)

Wr.Pet No. 6 of 200, decided on

Sri Uma Shankar & others
Vs.
State of Uttaranchal & others.

A.F.R. (Approved for reporting)
Not approved for reporting

Date 06.11.2001 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the judge for signature.

RESERVED

1. **Writ Petition No. 795/2001(S/B)**

Umar shaker & 7 others ……. Petitioners

Vs.

State of Uttaranchal & 6 others …….. Respondent

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2. **Writ Petition No. 803/2001(S/B)**

Amit Verma & Another ……. Petitioners

Vs.

State of Uttaranchal & 4 others …….. Respondent

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3. **Writ Petition No. 818/2001(S/B)**

Sachin Kumar ……. Petitioners

Vs.

State of Uttaranchal & 5 others …….. Respondent

……..

4. **Writ Petition No. 829/2001(S/B)**

Sidharth Srivastava & 2 others ……. Petitioners

Vs.

State of Uttaranchal & 7 others …….. Respondent

……..

5. **Writ Petition No. 830/2001(S/B)**

Raj Kumar Sharma &11 others ……. Petitioners

Vs.

State of Uttaranchal & 5 others …….. Respondent

……..

6. **Writ Petition No. 831/2001(S/B)**

Rajeev Kumar & 19 others ……. Petitioners

Vs.

State of Uttaranchal & 4 others …….. Respondent

……..

7. **Writ Petition No. 847/2001(S/B)**

Km. Neeta Vyas & 9 others ……. Petitioners

Vs.

State of Uttaranchal & 4 others …….. Respondent

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8. Writ Petition No. 857/2001(S/B)

Mahendra Pratap Singh & 2 others ……. Petitioners

Vs.

State of Uttaranchal & 4 others …….. Respondent

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9. Writ Petition No. 4271/2001(S/S)

Smt. Sarita Pandey & 2 others ……. Petitioners

Vs.

State of Uttaranchal & 4 others …….. Respondent

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Hon'ble P.C.Verma, J.
Hon'ble M.C. Jain, J.

(Delivered by Hon. P.C. Verma, J.)

All the above writ Petitions raise the same grievance. Therefore, they are being disposed of by this common judgment.

Writs of mandamus have been sought to command the State of Uttaranchal to appoint the petitioners on the posts against which they have been selected by the U.P. Public Service Commission prior to the appointed day.

Writs of certiorari have been sought by the petitioners in some of writ petition to quash the Govt. Order dated: 29/8/2001 issued by the State of Uttaranchal not to give appointment to the candidates on the basis of recommendations of Uttar Pradesh Public service Commission in various departments of the State of Uttaranchal.

Various posts which were to be filled up under the hill Sub Cadre Rules 1992, by the erstwhile State of Uttar Pradesh were advertised on various dates much prior to the appointed day even when there was no

decision to create the state of Uttaranchal. In response to the advertisements, the petitioners applied for appointment on the posts for which they were eligible and qualified. The Public service Commission, after holding a Written test and interview, prepared separate select list for the posts under various departments as per relevant Departmental Service Rules, under the Hill Sub Cadre Rules 1992. The select lists were forwarded by Public service Commission to the erstwhile State of Uttar Pradesh in some cases much before and in one case before the appointed day. After the coming into force of the U.P. Re- organization Act, 9th November, 2000 was fixed as the appointed day, on which the Act came into force and the State of Uttaranchal came into existence. After the appointed day, the State of Uttar Pradesh sent recommendations of the Public Service Commission to the state of Uttaranchal for appointment under the Hill Sub Cadre Rules 1992, along with the entire papers received for the Commission. In some cases, the medical and Police verification of the candidates had also been conducted by the erstwhile State of Uttar Pradesh.

After the receipt of the aforesaid recommendations, the State of Uttaranchal took a cabinet decision not to give appointment to the candidates on the posts for which recommendations were made by the Public Service Commission, Uttar Pradesh. The said decision was issued by the Govt. Order dated 29/8/2001 impugned in these writ petitions. The same reads as under:

> ^^ mi;qDr of'k; ij e[;r ;g dgus dk funs'k gqvk gS fd mRrjkpy jkT; ds xBu ds Ik'pkr fofHkUu foHkkxksa esa ykd lsok vk;ksx mRrj izns'k byksgkckn }kjk p;fur vHk;fFkZ;ksa dk lLrqfr;ksa fofHkUu inksa Ikj fu;qfDr;ksa inksUur djus gsrq mRrj izns'k 'kklu }kjk mRrjkpy 'kklu dk if'kr dh x;h gSA mDr lLrfr;ksa ioksorh jkT; mRrj izns'k dh foHkkxh; lqjpuk ds vk/kkj ij dh x;h gS tcfd mRrjkpy jkT; ds xBu ds Ik'pkr foHkkxh; lqjpukvksa ,oa vkj{k.k uhfr esa ifjorZu gks x;k gSA ,slh fLFkfr esa ioksorh jkT; }kjk if"kr lLrqfr;ksa ds vuqlkj fu;qfDr;ksa inksUur fd;s gksus esa 0;ogkfjd fof/kd dfBukbZ;ksa mRiUUu gksxhA

2 vr bl lEcU/k e lE;d fopkjkijkUr ‘kklu }kjk ;g fu.k; fy;k x;k g fd mRrj izn’k ykx lsok vk;ksx }kjk lLrqr vH;fFk;ksa dk mRrjkpy jkT; e fofHkUu foHkkxksa d vUrxr fu;fDr inksu u dh tk;A

3 vuqjk/k g fd dik rnuqlkj vxsRrj dk;Zokgh dju dk d”V djsA**

In the U.P. Reorganization act, three terms have been used and defined i.e. the existing State of Uttar Pradesh, State of Uttar Pradesh and State of Uttaranchal. Form the perusal of the Govt. Order Quoted above, it is clear that it denies the acceptance of the recommendations of Uttar Pradesh Public service Commission. It does not say that no appointment shall be given on the basis of recommendations of Public Service Commission of erstwhile State of Uttar Pradesh. Therefore, the said Govt. Order is liable to be ignored for the purposes of giving appointment on the recommendation of Public service Commission of erstwhile State of Uttar Pradesh and in this view of the matter we need not quash the Govt. Order dated 29/8/2001.

There is yet another reason for not quashing the impugned Govt. Order as the same has been issued after the appointed day and the State of Uttaranchal has established its own Public Service Commission. Now the appointments are to be made in consultation with the Uttaranchal Public Service Commission as per the changed policy mentioned in the Government Oder.

Now, the question arises for consideration as to whether the recommendations of Public Service Commission of erstwhile State of Uttar Pradesh for appointment under the Hill Sub Cadre Rules are binding on the State of Uttaranchal. Before dealing with the aforesaid question, it will be appropriate to deal with the question as to whether on the recommendation of a Public Service Commission a candidate acquires indefeasible right of appointment. The question whether a candidate whose name appears in the merit list on the basis of a competitive examination,

acquires indefeasible right of appointment as a government servant if a vacancy exists was referred to a Constitution Bench of the Hon'ble Apex Court and the Hon'ble Apex Court in (1991) 3 Supreme Court Cases 47 Shankarsan Dash Vs. Union of India held as under:

> "Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

The law laid down in Shankarsan Dash's case supra was relied upon and followed by another Division Bench of Hon'ble Apex Court in (1993) 2 Supreme Court Cases 573 Asha Kaul (Mrs.) & others Vs. State of Jammu & Kashmir & others as under:-

> " The Constitution has created a Public Service Commission and assigned it the function of conducting examination for appointments to services of the Union or to the services of State, as the case may be. According to article 320 clause (1) this is the primary function of the Commission. The Government is directed to consult the Public Service Commission on all matters relating to methods of recruitment to civil services and to civil posts and on the principles to be followed in making appointment to civil services and posts and on the suitability of candidates for such appointment, among other matters. An examination of Articles 317 to 320 makes it evident that the Constitution contemplates the Commission to be an independent and effective body outside the governmental control. **This is an instance of application of the basic tenet of democratic form of Government viz., diffusion of governing power. The idea is not to allow the concentration of governing power in the hands of one person, authority or organ."**

After considering the relevant service rules relating to recruitment the Hon'ble Court further held that the rules did not confer and absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission and held as under:-

> "Where however, the Government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favoritism or nepotism, it can refuse to approve the select list. In such a case, the Government is bound

> to record the reasons for its action, and produce the same before a court, if and when summoned to do so, apart from placing the same before the legislature as required by clause (2) of Article 323. Indeed, clause (2) of Article 323 obliges the Govermor of a state to lay a copy of the annual report received from the Commission before the legislature. " together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted (and) the reasons for such non-acceptance". Evidently, this is meant as a check upon the power of the Government. This provision too militates against the theory of absolute power in the Government to disapprove or reject the recommendations of the Commission. For the same reason, it must be held that the Government cannot pick and choose candidates out of the list. Of course, where in respect of any particular candidate any material is discovered disclosing his involvement in any criminal activity, the Government can always refuse to appoint such person but this would not be a case touching the select list prepared and recommended by the Commission. It is equally not open to the Government to approve a part of the list and disapprove the balance.
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> It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (State of Haryana VS. Subhash Cahnder Marwaha; Mani Subrat Jain Vs. State of Haryana ; State of Kerala Vs. Lakshmikutty) **but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce.** Having sent a requisition/ request to the Commission to select a particular number of candidates for a particular category, -- in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government--- the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this court in Shankarsan Dash Vs. Union of India where the earlier decisions of this Court are also noted."

Thus, it is settled view that though no indefeasible right for appointment can be claimed merely on the basis of a recommendation made by Public service Commission but equally the Government has no absolute right to reject the recommendation and to refuse appointment to the recommended candidates. There has to be a valid and reasonable ground for not accepting the recommendations of the Public service Commission for appointment on the posts for which the selection was held by the Commission.

Though we have for the reasons indicated in the preceding paragraphs, ignored the impugned Government Order dated

29.8.2001,yet we find that the reasons stated therein for not accepting the recommendations of the Commission are not valid reasons as these reasons are not the reasons for not accepting the recommendations of the Public service Commission as indicated by the apex Court in the case of Asha Kaul (Mrs.) supra.

The recommendations were made by the Public Service Commission of erstwhile State of Uttar Pradesh and were duly received by the State Govt. of erstwhile State of Uttar Pradesh prior to the appointed day. The recommendations were made strictly in accordance with Rules then prevalent prior to the appointed day. After receipt of recommendations, in few cases all the formalities were completed prior to the appointed day and in few cases the formalities were not completed prior to the appointed day.

Cases in which all formalities completed prior to 9.11.2000:

1.W.P. No. 829 (S/B)/2001	Siddharth Srivastava, Petitioner No. 1 for the post of Economics and Statistical Officer. Munna Lal, Petitioner No. 2 for the post of Economics and Statistical Officer. Rolli Mishra, Petitioner No. 3 for the post of Economics and Statistical Officer
2. W.P. No. 795(S/B)/2001	Uma Shankar, Petitioner No. 1 for the post of Peshkar. Anoop Singh, Petitioner No. 2 for the post of Peshkar. Nirvilkar Goel Petitioner No. 3 for the post of Peshkar. Alok Kumar, Petitioner No. 4 for the post of Peshkar. Jitendra Kumar Pandey, Petitioner No.5 for the post of Peshkar. Manoj Kumar Rastogi, Petitioner No.6 for the post of Peshkar. Ganga Prasad Tiwari, Petitioner No. 7 for the post of Peshkar. Hari Prasad Arya, Petitioners No. 8 for the post of Executive Officer, Nagar Palika Parishad.

Cases in which recommendation accepted but formalities Not Completed prior to 9.11.2000)

W.P. No. 830 (S/B)/2001	Raj Kumar Sharma, Petitioner No. 1 of the post of Junior Engineer (Civil). Ashok Kumar Singh Petitioner No. 2 of the post of Junior Engineer (Civil). Anupam Kumar Pandey, Petitioner No. 3 of the post of Junior Engineer (Civil). Sheela Bhadra Singh Petitioner No. 4 of the post of Junior Engineer (Civil). Mul Chandra Sharma, Petitioner No. 5 of the post of Junior Engineer (Civil). Pradeep Kumar Srivastava, Petitioner No. 6 of the post of Junior Engineer (Civil). Sudhir Kumar Singh, Petitioner No. 7 of the post of Junior Engineer (Civil). Jugal Kishore, Petitioner No. 8 of the post of Junior Engineer (Civil). Ugrasen Tiwari Petitioner No. 9 of the post of Junior Engineer (Civil). Manish Kumar Pandey Petitioner No. 10 of the post of Junior Engineer (Civil/Technical). Hari Shankar Singh, Petitioner No. 11 of the post of Junior Engineer (Civil). Vinod Kumar Srivastava, Petitioner No. 12 of the post of Junior Engineer (Civil/Technical). Ajai Kumar Singh, Petitioner No. 13 of the post of Junior Engineer (Civil).

Like provisions contained in clause(2) of Article 323, the U.P.Reorganisation Act contains provisions under Section 78, which reads as under:

> "78. **Provisions as to state Public Service Commission-** (1) The Public Service Commission for the existing State of Uttar Pradesh shall, on and from the appointed day, be the Public service Commission for the State of Uttar Pradesh.
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> (2) The persons holding office immediately before the appointed day as the Chairman or other member of the Public service Commission for the existing State of Uttar Pradesh shall, as from the appointed day, be the Chairman or, as the case may be, the other member of the Public service Commission for the State of Uttar Pradesh.
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> (3) Every person who becomes the Chairman or other member of the Public Service Commission for the State of Uttar Pradesh on the appointed day under sub-section (2), Shall-
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> (a) be entitled to receive from the Government of the State of Uttar Pradesh conditions of service not less favourable than those to which he was entitled under the provisions applicable to him;
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> (b) subject to the proviso to clause (2) of Article 316, hold officer or continue to hold office until the expiration of his term of office as determined under the provisions applicable to him immediately before the appointed day.

(4) The report of the Uttar Pradesh Public service Commission as to the work done by the Commission in respect of any period prior to the appointed day shall be presented under clause (2) of Article 323 to the Governors of the States of Uttar Pradesh and Uttaranchal, and the Governor of the State of Uttar Pradesh shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as for as possible, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non- acceptance to be laid before the Legislature of the State of Uttar Pradesh and it shall not be necessary to cause such report or any such memorandum to be laid before the Legislative Assembly of the State of Uttaranchal.

From the perusal of the aforesaid section, it is evident that in case of non-acceptance of the recommendations of the Commission, the Governor of Uttar Pradesh has to place before the assembly after the appointed day the reasons for not accepting the recommendations. Admittedly, all the recommendations received by the erstwhile State of Uttar Pradesh have been sent to the State of Uttaranchal and they were not reserved by the Governor for being placed with reasons before the assembly of state of Uttar Pradesh under Section 78 of U.P. Reorganisation Act.

Therefore, we hold that for the reasons recorded above, the recommendations of Public service Commission of erstwhile State of Uttar Pradesh for appointment on the posts under Hill Sub Cadre Rules, 1992 which were received prior to the appointed day by the State Govt. of erstwhile State of Uttar Pradesh are now binding on the State of Uttaranchal and the recommended candidates on their merit should be given appointment.

Accordingly, all the writ petitions are allowed and the state of Uttaranchal is directed to proceed to complete the formalities for giving appointment to the petitioners in accordance with relevant service rules. There will be no order as to costs.

(M.C. Jain, J.) **(P.C.Verma, J.)**

November 06, 2001
P.Singh